

As requested by the Examiner, Applicants have copied claim 1 of Theisen et al., U.S. Patent No. 5,500,162, as claim 28 herein. Dependent claims 29-33, depending directly or indirectly from claim 28, have been added.

The Examiner requested that the Applicants copy claim 1 of Theisen et al., U.S. Patent No. 5,500,162, in order to provoke an interference. Applicants have copied the claim as claim 28 herein. That claim is indicated by the Examiner to be allowable in this application. Claims 29-33, which are dependent on claim 28, are also believed to be allowable.

Applicants respectfully submit that an interference cannot be provoked with U.S. Patent No. 5,500,162, since the interference statute, 35 U.S.C. §135(a) states that:

- a) Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, an interference may be declared . . . (emphasis added).

An interference cannot be declared as U.S. Patent No. 5,500,162, has expired by failure to pay the first maintenance fee, due March 19, 2000, at the latest. U.S. Patent No. 5,500,162 does not meet the statutory requirement for an "unexpired" patent.

Further, applicants respectfully submit that the '162 patent cannot be cited as prior art against the subject application as the subject application claims direct parentage through continuations, back to the original filing date of April 28, 1993, while the Theisen patent has a §102(e) date of May 13, 1994, the PCT parent application having been filed May 4, 1993. The subject application has an earlier filing date than any date pertinent to the '162 patent.

**KADNER et al. -- Ser. No. 08/958,865**

Applicants respectfully submit that claims 28-33 are in condition for allowance and request that the claims be allowed and the application passed to issue.

If any questions relating to patentability remain unresolved, the Examiner is respectfully invited to telephone the undersigned counsel for the purpose of resolving such questions.

Respectfully submitted,

PILLSBURY MADISON & SUTRO LLP

By 

Ruth N. Morduch  
Reg. No. 31,044  
Tel. (202) 861-3617  
Fax (202) 822-0944

RNM/jcc  
1100 New York Avenue, N.W.  
Ninth Floor, East Tower  
Washington, D.C. 20005-3918  
(202) 861-3000